

---

# CONTENTS

---

<i>Authors</i> .....	xiii
<i>Acknowledgements</i> .....	xiv
<i>Table of Cases</i> .....	xv
<i>Table of Laws</i> .....	xxxiii
<b>1. Documentary Credits in Practice</b> .....	<b>1</b>
I. Background.....	1
II. Documentary Credits Distinguished from Similar Facilities.....	3
A. Documentary Credits and Open Credits.....	3
B. Letters of Credit with a 'Red Clause'.....	4
C. Standby Credits and Performance Bonds.....	5
III. Documentary Credits Classified.....	6
A. Need for Classification.....	6
B. Revocable and Irrevocable Credits.....	6
C. Confirmed and Unconfirmed Credits.....	10
D. Straight and Negotiation Credits.....	13
E. Transferable and Non-Transferable Credits.....	14
F. Revolving (Evergreen) Credits.....	15
IV. Use of Bills of Exchange.....	15
V. Review of a Transaction.....	18
<b>2. The Uniform Customs and Other Sources of Law</b> .....	<b>22</b>
I. Applicable Sources.....	22
II. The Uniform Customs and Practice for Documentary Credits (UCP): Their Development.....	23
A. Their Background and History up to 1993.....	23
B. UCP 500 and Related Guidelines.....	27
C. UCP 600.....	33
III. Legal Nature of the UCP.....	43
A. The Legal Effect of the UCP.....	43
B. Construction of the UCP.....	46
C. Application of the UCP in Borderline Cases.....	48
IV. Usages and Banking Practice.....	50
A. Basic Principles.....	50
B. Effect of Trade Usages on Documentary Credit Transactions.....	51
C. Role of Banking Practice.....	53
V. Statutes and Laws.....	54
A. Scope.....	54
B. Article 5 of the Uniform Commercial Code (USA).....	54
C. Statutory Provisions in Other Jurisdictions.....	58

<b>3. The Documentary Credit Clause of the Underlying Contract</b> .....	<b>60</b>
I. Nature of Clause .....	60
II. Time at which Credit must be Furnished .....	62
III. Type of Credit to be Furnished.....	65
IV. Waiver of Documentary Credit Clause .....	68
V. Effect of Opening of Credit and its Dishonour .....	71
<b>4. Contract between Applicant and Issuing Bank</b> .....	<b>81</b>
I. General Aspects of Legal Relationship .....	81
A. Opening the Credit .....	81
B. Vicarious Performance—Use of Correspondent Banks .....	82
C. Nature of Relationship.....	83
II. Issuing Bank's Obligations .....	84
A. Issue and Honour Credit .....	84
B. The Issuing Bank's Mandate.....	86
C. Autonomy of Credits .....	89
D. Non-Conforming Presentation: Duty Not to Honour.....	89
E. Issuing Bank's Duty of Care .....	90
III. Disclaimers and Exclusions of Liability .....	91
A. The UCP Provisions.....	91
B. Effectiveness of Disclaimer Regarding Acts of an Instructed Party .....	94
C. Deemed Compliance Clause.....	100
IV. Applicant's Obligations .....	103
A. Reimbursement for Amounts Payable under the Credit .....	103
B. Commission and Other Charges.....	105
C. Arrangements for Payment by the Applicant.....	106
V. Documents as the Issuing Bank's Security.....	107
A. Pledge of Bills of Lading.....	107
B. Trust Receipts .....	108
<b>5. Issuing Bank's and Confirming Bank's Contract with Beneficiary</b> .....	<b>109</b>
I. Nature and Content of Agreement between Issuing Bank and Beneficiary.....	109
A. Form and Content.....	109
B. When Does a Binding Contract Arise? .....	109
C. Consideration .....	110
D. Contracts (Rights of Third Parties) Act.....	111
E. Amendment.....	112
F. Enforceability of Contract .....	112
II. Obligations of Issuing Bank and Confirming Bank.....	113
A. General Introduction .....	113
B. UCP 600 Article 7: Issuing Bank's Undertaking.....	114
C. UCP 600 Article 8: Confirming Bank's Undertaking.....	115
D. Autonomy and the Fraud Exception.....	116
III. Complying Presentation by Beneficiary.....	117
A. Presentment of Stipulated Documents: Documentary Compliance .....	117
B. Bank's Duty to Examine, Honour or Reject .....	118
C. Bank Precluded from Claiming Non-Complying Presentation .....	120
D. Time and Place of Presentation.....	121

IV. Bank's Liability towards Beneficiary.....	122
A. Wrongful Dishonour.....	122
B. Late Payment.....	128
C. Defences for Non-Payment.....	129
D. Set-off.....	130
E. Competition between Issuing Bank and Assignee of Proceeds of Credit.....	131
V. Bank's Right of Recourse against Beneficiary.....	132
A. Complying Presentation.....	133
B. Non-Complying Presentation.....	133
C. Bills of Exchange.....	135
D. Fraud and Misrepresentation.....	136
<b>6. Autonomy and the Fraud Exception.....</b>	<b>138</b>
I. Autonomy Principle.....	138
II. Statement and Scope of the Fraud Exception.....	139
A. Decision in <i>United City Merchants</i> .....	139
B. Scope of the Fraud Exception.....	141
III. Effect of Fraud.....	144
A. Bank's Refusal to Honour.....	144
B. Is a Bank Entitled to Reimbursement?.....	147
C. Will Court Grant Injunction to Stop Payment?.....	153
D. Bank's Recourse Against Beneficiary.....	163
IV. Extension of the Fraud Exception: Other Exceptions to the Autonomy Principle?.....	168
A. General.....	168
B. Nullity Exception.....	170
<b>7. The Correspondent Bank.....</b>	<b>175</b>
I. General Introduction.....	175
A. Roles of Correspondent Bank.....	175
B. Overview of Correspondent Bank's Legal Position.....	176
C. Correspondent Issuer.....	177
II. The Advising Bank.....	177
A. Role of Advising Bank.....	177
B. Provisions of the UCP.....	178
III. The Nominated Bank.....	181
A. Who is a Nominated Bank?.....	181
B. No Duty to Honour or Negotiate.....	183
C. Rights and Liabilities of Nominated Bank.....	183
D. Prepayment of Deferred Payment Credit or Acceptance Credit.....	186
E. Negotiating Bank.....	187
F. Correspondent Bank and Beneficiary: Payment under Reserve.....	189
IV. The Confirming Bank.....	190
A. General.....	190
B. Confirming Bank's Rights and Obligations.....	191
C. Silent Confirmations.....	192
V. Recourse by and Against the Correspondent Bank.....	193
A. Issuing Bank's Recourse Against Correspondent Bank.....	193
B. Correspondent Bank's Recourse Against Beneficiary.....	194

VI. Applicant's Extra-contractual Options Against Correspondent Bank .....	195
A. No Privity of Contract .....	195
B. Contracts (Rights of Third Parties) Act (CRTPA) .....	195
C. An Action in Tort .....	196
<b>8. The Reimbursing Bank.....</b>	<b>198</b>
I. Practice .....	198
II. Relationship of Reimbursing Bank and Issuing Bank .....	199
III. Relationship of Reimbursing Bank and Claiming Bank .....	203
IV. The Reimbursement Claim .....	205
V. Exemption Clauses.....	208
<b>9. The Beneficiary's Bank.....</b>	<b>210</b>
I. Current Practice .....	210
II. Relationship of the Beneficiary with his Bank .....	211
A. Collection and Negotiation Distinguished .....	211
B. Silent Confirmations.....	212
C. Bank's Right of Recourse against the Beneficiary .....	214
III. The Rights of the Beneficiary's Bank Against the Issuing Bank .....	217
IV. Clashes, Priorities and Set-off.....	219
A. Meaning of Terms .....	219
B. Clashes .....	220
C. Priorities.....	221
D. Set-off.....	222
E. Position where the Beneficiary's Bank is a Nominated Bank.....	223
<b>10. Tender of Documents: General Principles of Documentary Compliance.....</b>	<b>224</b>
I. Introduction .....	224
II. Examination of Documents.....	224
A. The Bank's Duty of Examine Documents .....	224
B. The Principle of Strict Compliance .....	227
C. Consistency of Documents; Data in Documents not to be in Conflict.....	229
D. Original Documents; Copies of Documents; Signatures.....	232
E. Alterations and Corrections to Documents.....	235
F. Language .....	236
G. Limits of Drawing on Credit, Quantities, Unit Price and Partial Shipments.....	236
H. Dates Stipulated in the Credit and Dates on Documents.....	237
I. Non-Documentary Conditions .....	238
III. Time for Examination and Rejection of Discrepant Documents; Rejection Notice; Waiver .....	240
A. The Time Allowed for Examination and Rejection of Documents .....	240
B. Rejection Notice: Contents and Means of Communication .....	243
C. Preclusionary Effect of Not Acting in Accordance with Article 16 .....	245
<b>11. Compliance with Specific Documents.....</b>	<b>246</b>
I. Introduction .....	246
II. The Commercial Invoice .....	246
A. UCP 500.....	246
B. UCP 600.....	249

III. Transport Documents.....	250
A. Marine or Ocean Bills of Lading (UCP 500).....	250
B. Bills of Lading (UCP 600) .....	255
C. Non-Negotiable Sea Waybills.....	256
D. Charterparty Bill of Lading .....	256
E. Multimodal Transport Documents.....	259
F. Air Transport Documents.....	260
G. Road, Rail or Inland Waterway Transport Documents.....	261
H. Courier and Post Receipts.....	263
I. Transport Documents Issued by Freight Forwarders.....	263
IV. Certain Issues Common to Transport Documents .....	265
A. Deck Carriage .....	265
B. Freight.....	265
C. Consignor of Goods/Beneficiary of Credit.....	266
D. 'Clean' Transport Documents.....	266
E. Terms and Conditions of Carriage.....	268
F. Vessels Propelled by Sail Only .....	268
G. Partial Drawings or Shipments.....	268
H. 'Stale' Transport Documents .....	269
I. Attestation or Certification of Weight .....	270
V. Insurance Documents (UCP 500) .....	270
A. Type of Insurance Cover.....	271
B. All Risks Insurance Cover .....	271
C. Form of Insurance Documents and Originals .....	272
D. Commencement of Cover.....	273
E. Amount of Insurance Cover.....	273
F. Excess (Deductible).....	274
VI. Insurance Documents (UCP 600) .....	274
A. Introduction .....	274
B. Signature by Proxies.....	274
C. Originals .....	275
D. Cover Notes.....	275
E. Pre-signing.....	275
F. Amount of Coverage.....	276
VII. Unspecified Documents (UCP 500) .....	276
A. Issuers and Data Content.....	276
B. Ambiguous Instructions .....	277
C. Consistency.....	278
D. Dates.....	279
E. Drafts.....	279
VIII. Unspecified Documents (UCP 600) .....	279
A. 'Not Conflict With'.....	280
<b>12. Transfer and Assignment of the Proceeds of a Letter of Credit.....</b>	<b>281</b>
I. Transfer, Back-to-back Credit, Transfer of Drawing Rights and Assignment of Proceeds Distinguished.....	281
II. Transfer of Letter of Credit .....	284
A. The Practice and the Duty of Confidentiality.....	284

B. Legal Nature of Transfer .....	286
C. The Regime of Article 38 of UCP 600 .....	287
III. Back-to-Back Credits .....	292
A. The Practical Distinction between Transferable and Back-to-Back credits .....	292
B. The Position of the Issuing Bank's Correspondent .....	293
IV. Assignment of Proceeds .....	295
A. Object of an Assignment of Proceeds .....	295
B. The Assignee's Drawing Rights .....	297
<b>13. Independent Guarantees: Performance Bonds, Standby Credits and Similar Undertakings .....</b>	<b>300</b>
I. Introduction and Context .....	300
A. Extension of Commercial Credit Principles: Independent Guarantees .....	300
B. Independent Guarantees Contrasted with Traditional Common Law Guarantees .....	302
C. Historical and Geographical Origins .....	303
D. Standby Credits Compared with Independent Guarantees Generally .....	304
E. Interchangeable Usage? .....	305
F. Importance of Contractual Terms .....	305
G. Uses of Independent Guarantees and Standby Credits .....	306
H. Comparison with Commercial Credits .....	307
II. Parties and Contracts .....	308
III. Contract between Issuer and Beneficiary .....	309
A. Introduction: Balance of Power .....	309
B. Construing the Bank's Undertaking: Conditional Upon Proof of Applicant's Default? .....	310
C. Scope of Guarantee. Which Underlying Obligations are Secured? .....	314
D. Autonomy and the Fraud Exception .....	316
E. Requirements of a Valid Demand .....	326
F. Excessive Payment: No Recovery by Issuing Bank .....	329
IV. Contract between Applicant and Beneficiary .....	330
A. Control against Unmeritorious Calls .....	330
B. Final Accounting between the Parties .....	332
V. Counter-guarantees .....	335
VI. Standard Rules for Independent Guarantees and Standby Credits .....	335
A. The UCP .....	336
B. The ISP 98 .....	338
C. ICC Uniform Rules for Demand Guarantees (URDG) .....	345
D. UN Convention on Independent Guarantees and Stand-by Letters of Credit (1995) .....	349
<b>14. The Conflict of Laws relating to Letters of Credit .....</b>	<b>352</b>
I. Introduction .....	352
II. Letters of Credit in the Conflict of Laws .....	353
A. The Nature of Letter of Credit Transactions .....	353
B. The Role of the UCP .....	355
C. The Role of the Autonomy Principle .....	356

III. Jurisdiction .....	357
A. European Law .....	357
B. Common Law .....	366
IV. Choice of Law .....	375
A. Contract .....	375
B. Substance and Procedure: Set-off, Time Bars, Injunctions, etc. ....	389
C. Transfers, Assignments and Subrogation .....	391
D. Enforceability of Debts .....	393
E. Torts .....	394
F. Restitution .....	395
G. Equitable Claims .....	397
V. Conclusion .....	397
<b>15. Documentary Credits and the Expert Witness .....</b>	<b>399</b>
I. Practice and Law .....	399
II. Expert Evidence in Banking Law .....	401
A. When Relevant .....	401
B. The Basic Principles .....	404
C. The Expert's Role.....	405
D. The Court's Powers .....	407
E. Who is an Expert? .....	412
F. Form of Expert's Report .....	415
G. Single Joint Expert.....	417
III. The Expert in Letter of Credit Cases .....	418
<i>Index</i> .....	421

<http://www.pbookshop.com>